IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Crl.MC.No. 2293 of 2007()

CC.63/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR
[CRIME NO.325/99 OF MATTANNUR POLICE STATION]

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PETITIONER: 6TH ACCUSED

KANNOTH MOHAMMED, S/O. ERAMULLAN,
BADARIA MANZIL, PORORA P.O., KANNUR DISTRICT.

BY ADV. SRI.CIBI THOMAS

RESPONDENTS: COMPLAINANT/STATE
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1. SUB INSPECTOR OF POLICE,
MATTANNUR POLICE STATION.

2. STATE, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2293 of 2007

Dated this the 18th day of July 2007

O R D E R

The petitioner faced indictment along with the co-accused for offences punishable inter alia under Section 324 read with 149 I.P.C. The accused were allegedly members of an unlawful assembly which indulged in culpable overt acts. The co-accused faced the trial. The petitioner was absconding and was not available for trial. The co-accused were found not guilty and acquitted in the trial held before the learned Magistrate. After the acquittal of the co-accused, the petitioner has now come before this court with the prayer that the prosecution against him may also be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The only reason urged is that the co-accused have been found not guilty and acquitted. It is by now trite that after the decision of the Full Bench in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)], that the mere fact that the co-accused have been acquitted is no reason for the absconding co-accused to claim any advantage or benefit. Moreover, in the facts and circumstances of this case, I find that the existence of an unlawful assembly is indicated in the trial held before the learned Magistrate. The question is whether the petitioner was a member of the unlawful

assembly or not. That question cannot certainly be considered or concluded on the basis of evidence in the trial against the petitioner. The petitioner had not appeared and taken part in the trial. Prosecution was not obliged to adduce any evidence against the petitioner in such trial. The prayer for quashing of the proceedings must, in these circumstances, fail.

3. The learned counsel for the petitioner finally makes a submission that the petitioner is willing to appear before the learned Magistrate. He is innocent. His absence was due to reasons beyond his control. The petitioner now wants to surrender before the learned Magistrate. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

5. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by

the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1) KLT 339].

6. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007